

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW GEORGE JENNINGS,

Petitioner,

vs.

D.L. RUNNELS, Warden

Respondent.

No. C 01-3751 PJH (PR)

**ORDER REOPENING CASE
AND LIFTING STAY**

This is a habeas case filed pro se by a state prisoner. It is fully briefed and submitted. One of petitioner's claims is that his Confrontation Clause rights were violated when statements to the police by three non-testifying co-defendants were admitted at trial without a prior opportunity for cross-examination. It appeared this issue would be controlled by *Crawford v. Washington*, 541 U.S. 36, 59 (2004), which the Ninth Circuit had held to apply retroactively to cases on collateral review such as this one, so the court stayed this case to allow petitioner to exhaust the *Crawford* issue in state court. He has written the court saying that he has completed exhaustion. The letter will be treated as a motion to reopen and lift the stay.

The United States Supreme Court has now reversed the Ninth Circuit's holding that *Crawford* applies retroactively, see *Whorton v. Bockting*, 127 S. Ct. 1173, 1184 (2007) (applying *Teague v. Lane*, 489 U.S. 288, 310-316 (1989)), so the question upon which the stay was granted is now moot – *Crawford* does not apply to petitioner's claim. In any event, petitioner also has exhausted.

///

///

1 The implied motion to lift the stay and reopen the case is **GRANTED**. The clerk
2 shall reopen this case. Because *Crawford* does not apply, no further briefing is necessary;
3 the case will be decided in its proper order without further action by the parties.

4 **IT IS SO ORDERED.**

5 Dated: November 7, 2007.



PHYLLIS J. HAMILTON
United States District Judge